

feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(3) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity.

211.272 Alternate preservation, packaging, and packing.

Use the provision at 252.211–7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

Subpart 211.5—Liquidated Damages.

211.504 Contract clauses.

(b) Use the clause at FAR 52.211–12, Liquidated Damages—Construction, in all construction contracts exceeding \$500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of \$500,000 or less is optional.

Subpart 211.6—Priorities and Allocations.

211.602 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

35. Part 212 is revised to read as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS—GENERAL

Sec.

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

212.211 Technical data.

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at 227.7102.

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) Use the provision at 252.225–7013, Domestic Wool Preference, as prescribed in 225.7002–4(b).

(ii) Use one of the following provisions as prescribed in part 225:

(A) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(B) 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

(C) 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

(iii) Use the provision at 252.212–7000, Offeror Representations and Certifications—Commercial Items, in all solicitations for commercial items exceeding the simplified acquisition threshold in FAR part 13. If an exception to 10 U.S.C. 2410i applies to a solicitation exceeding the simplified acquisition threshold (see 225.770–3), indicate on an addendum that “The certification in paragraph (b) of the provision at 252.225–7000 does not apply to this solicitation.”

(iv) Use the clause at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraph (b), as appropriate.

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.*

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) Section 806, Public Law 102–190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(ii) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(v) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(vi) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(viii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(ix) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242–7004).

(x) 107 Stat 1720 (Section 843(a), Public Law 103–160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(xi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years.

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203–6).

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.804).

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2241 note, Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States.

(ii) Section 806, Public Law 102–190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(iii) 10 U.S.C. 2306(b) Prohibition on Contingent Fees.